



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 230802-0182]

RIN 0648-BL87

Endangered and Threatened Wildlife and Plants; Proposed Protective Regulations for the Threatened Banggai Cardinalfish (*Pterapogon kauderni*)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; notice of availability of a draft environmental assessment.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall issue protective regulations the Secretary deems necessary and advisable for the conservation of species listed as threatened. The Secretary may apply any of the prohibitions in section 9 of the ESA. This proposed rule would promulgate protective regulations to apply a subset of the ESA section 9 prohibitions to the Banggai cardinalfish (*Pterapogon kauderni*). We also announce the availability of a draft environmental assessment (EA) that analyzes the environmental impacts of this action, and solicit comments regarding this action and the draft EA.

DATES: Comments regarding the proposed rule and supporting documents may be sent to the appropriate address (see **ADDRESSES**), no later than 5 p.m. Eastern Standard Time on [insert date 60 days after date of publication in the *FEDERAL REGISTER*]. A public hearing may be requested by [insert date 45 days after date of publication in the *FEDERAL REGISTER*]. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2023-0099, by Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <https://www.regulations.gov> and enter NOAA-NMFS-2023-0099 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources, celeste.stout@noaa.gov, (301) 427-8436; Erin Markin, NMFS, Office of Protected Resources, erin.markin@noaa.gov, (301) 427-8416.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 2016, we published a final rule listing the Banggai cardinalfish (*Pterapogon kauderni*) as a threatened species under the ESA (81 FR 3023). At that time, we summarized the process for considering the application of ESA section 9 prohibitions (16 U.S.C. 1538) to the threatened Banggai cardinalfish and stated that we would consider potential protective regulations pursuant to ESA section 4(d) (16 U.S.C. 1533(d)) for the Banggai cardinalfish in a future rulemaking.

The prohibitions listed under section 9(a)(1) of the ESA automatically apply when a species is listed as endangered but not when listed as threatened. In the case of a threatened species, section 4(d) of the ESA requires the Secretary to issue such regulations the Secretary deems necessary and advisable to provide for the conservation of the species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under ESA section 9(a)(1). Thus, NMFS has flexibility under ESA section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The status review of the Banggai cardinalfish (Conant, 2015), and the Banggai Cardinalfish 5-Year Review (2021) provided extensive information on the status of the Banggai cardinalfish. The information and conclusions from these documents are briefly summarized below.

On April 22, 2021, NMFS received a petition from the Center for Biological Diversity, the Animal Welfare Institute, and the Defenders of Wildlife requesting NMFS promulgate a rule under section 4(d) of the ESA to provide for the conservation of the Banggai cardinalfish. On August 4, 2021, NMFS published in the **Federal Register** a notice of receipt of that petition (86 FR 41935) and requested information and comments for evaluating the request during a 60-day comment period. In addition to comments and information pertaining to any aspect of the petition, we specifically requested information regarding: (1) the adequacy of existing measures regulating the collection and trade of the Banggai cardinalfish throughout its range; (2) the availability and efficacy of captive-bred fish for aquaria trade, both domestic and international; (3) information on the collection/harvest (including, but not limited to, number, location, mortality rate), and trade (import/export data, value, transit mortality rates) of wild fish for aquaria trade; and (4) implementation and efficacy of Indonesia's National Plan of Action (NPOA) (2017-2021) for Banggai cardinalfish and adequacy of enforcement of Banggai cardinalfish regulations. We received 18,395 comments on that notice, of which 18,391 were from

concerned citizens, scientists, and the Center for Biological Diversity, Animal Welfare Institute, and Defenders of Wildlife, in support of promulgating protective regulations. The comments focused on the importance of conserving the species, specifically by prohibiting the importation of Banggai cardinalfish into the United States. The other four comments did not support promulgating protective regulations. Those comments expressed concern regarding the effect applying the prohibitions in section 9 of the ESA to this species would have on the aquaculture production of Banggai cardinalfish and on conservation efforts for this species in Indonesia.

In the case of threatened species, pursuant to ESA section 4(d), the Secretary may by regulation prohibit any act prohibited under ESA section 9(a)(1). Such regulations may include any or all of the prohibitions in section 9(a)(1) that apply to endangered species. Those section 9(a)(1) prohibitions make it unlawful, with limited specified exceptions, for any person subject to the jurisdiction of the United States to: (A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C); (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species; (F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of the ESA and promulgated by the Secretary pursuant to authority provided by the ESA. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or regulations issued under the ESA.

The Banggai cardinalfish is a foreign species and occurs only in areas beyond the U.S. exclusive economic zone and territorial waters. The Banggai cardinalfish is a

relatively small marine fish. Adults generally do not exceed 55 to 57 millimeters (mm) standard length (Vagelli, 2011). The species is distinguished by its tasseled first dorsal fin, elongated anal and second dorsal fin rays, and deeply forked caudal fin (Allen, 2000). It is brilliantly colored, with contrasting black and light bars with whitish spots over a silvery body. The Banggai cardinalfish has an exceptionally restricted natural range limited to 20-34 kilometers² of shallow-water habitat around 34 islands within the Banggai Archipelago, Indonesia. It inhabits a variety of shallow (from about 0.5 to 6 meters) habitats including coral reefs, seagrass beds, and less commonly, open areas of low branching coral and rubble. To avoid predators, it associates with microhabitats, such as sea urchins and anemones (Vagelli, 2011). Banggai cardinalfish are found in waters ranging from 26 to 31 degrees Celsius (°C), but averaging 28 °C (Ndobe *et al.*, 2013).

The Banggai cardinalfish exhibits reversed sex roles, where males provide parental care and brood eggs in their mouths. It lacks a planktonic larval stage and extends the brooding of larvae for about 7 days after hatching, which results in the release of fully formed juveniles. Spawning occurs year-round but peaks around September through October, which is a period of fewer storms in the region (Ndobe *et al.*, 2013). Its lifespan in the wild has been estimated at approximately 2.5-3 years (Vagelli, 2011), with a maximum lifespan up to 3-5 years (Ndobe *et al.*, 2013). Banggai cardinalfish mature at <1 year of age, which corresponds to approximately 40 mm standard length. The number of eggs in an egg mass ranges from 20 to 102 (mean = 59), while the number of eggs brooded ranges from 45 to 99 (mean = 59). High mortality occurs during the first days after release from the brood pouch due to predation, including parental and non-parental cannibalism (Vagelli, 1999).

As a part of the listing process, we concluded that Banggai cardinalfish had experienced a decline in abundance, as evidenced by a decrease in mean density at survey sites between 2004 and 2012. Moreover, some researchers believe that the population

may have experienced a dramatic decline from historical abundance due to overharvest based on comparisons between populations in a private bay and other populations (Conant, 2015). Several threats to the Banggai cardinalfish were identified as contributing to this decline, including the degradation of habitat, international trade as a live marine ornamental reef fish, disease linked to high mortality of wild-caught fish imported for the ornamental trade, and inadequate protections in its endemic range. The threat of overharvest was and continues to be a considerable threat to the Banggai cardinalfish for use in the international aquarium trade. According to the best available data, approximately 120,000 Banggai cardinalfish are imported to the United States each year, primarily for use in the aquarium and pet trade. This number is anticipated to remain fairly stable over the foreseeable future. The U.S. Fish and Wildlife Service tracks the importation of wildlife—including Banggai cardinalfish—and their derived products into the U.S. through the Law Enforcement Management Information System (LEMIS) database. While LEMIS data include select records of imports of Banggai cardinalfish declared under the Banggai cardinalfish species code, most imports of the fish are coded under the generic marine ornamental fish species code. As a result, our estimate of average annual imports of Banggai cardinalfish to the U.S. also reflects input from pet industry trade group representatives and academic experts.

On March 29, 2021, NMFS completed a review of the species ESA classification pursuant to section 4(c)(2), also known as a 5-year review, which again concluded that the threatened Banggai cardinalfish is at risk of extinction primarily because its populations have been reduced by anthropogenic stressors that include, but are not limited to: (1) degradation of habitat; (2) international trade as a live marine ornamental reef fish; (3) disease linked to high mortality of wild-caught fish imported for the ornamental trade; and (4) inadequate protections in its endemic range.

The review further concluded that the Banggai cardinalfish is likely to become an endangered species within the foreseeable future and should continue to be classified as a threatened species.

Proposed 4(d) Protective Regulations for the Banggai Cardinalfish

The ESA does not specify particular prohibitions for threatened species. Instead, under section 4(d) of the ESA, the Secretary has discretion to issue such protective regulations as the Secretary deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to, by regulation, prohibit with respect to any threatened species of fish or wildlife, any act prohibited under ESA section 9(a)(1). Permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes.

Under section 4(d) of the ESA, the Secretary may develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Secretary may issue a 4(d) rule that includes some or all of the prohibitions set out in the ESA. We are exercising our discretion to propose a 4(d) rule for the Banggai cardinalfish.

Our conservation objective is to prevent further reduction of existing wild populations of Banggai cardinalfish. Therefore, we are proposing to apply to the Banggai cardinalfish the prohibitions in ESA section 9(a)(1)(A). The ESA section 9(a)(1)(A) prohibitions would make it unlawful for any person subject to the jurisdiction of the United States to import the species into or export the species from the United States.

Import and Export

This proposed rule would apply to all commercial and noncommercial international shipments of live and dead Banggai cardinalfish and parts and products, including the import and export of personal pets and research samples. The import and

export of wild-caught and captive-bred Banggai cardinalfish into and from the United States and its territories would be prohibited.

We assessed the conservation needs of the Banggai cardinalfish in light of the lack of protections or other regulations of the international trade in this species. The best available commercial data indicate that the legal and illegal trade of Banggai cardinalfish for use in the international aquarium trade is currently a threat to the persistence of the species. The Banggai cardinalfish is a popular marine ornamental fish that has been heavily traded in the aquarium trade since the mid-1990s. The current trade estimates are between 500,000 and 900,000 individuals annually worldwide (Ndobe *et al.*, 2018a; Akmal *et al.*, 2020). Tracking the trade of Banggai cardinalfish is very difficult, as it is not listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which provides a legal framework to regulate the international trade of species listed under CITES, and as such Parties are not required to include trade in this species in their annual report to CITES. However, Banggai cardinalfish was ranked the 10th, 11th, and 8th most imported aquarium fish into the United States in 2008, 2009, and 2011, respectively (Rhyne *et al.*, 2017a), and the current trade estimates remain comparable to the annual numbers noted in the 2015 status review (Conant, 2015). As mentioned previously, LEMIS data only includes select records of imports of Banggai cardinalfish declared under the Banggai cardinalfish species code, and most imports of the fish are coded under the generic marine ornamental fish species code. As a result, our estimate of average annual imports of Banggai cardinalfish to the U.S. also reflects input from pet industry trade group representatives and academic experts. According to data gathered for the initial regulatory flexibility analysis (IRFA) (described below in the **Classification** section), there are five or fewer businesses that account for all imports of Banggai cardinalfish into the United States. These businesses import approximately 120,000 Banggai cardinalfish per year.

Interstate Commerce

This rule proposes to prohibit the import into and export from the United States and its territories. No other prohibitions under section 9 of the ESA would be applied. A person would continue to be able to deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase Banggai cardinalfish in interstate commerce. Although we do not have current data, we believe there are a number of Banggai cardinalfish in the United States. However, we have no information to suggest that interstate commerce activities within the United States are associated with threats to Banggai cardinalfish or would negatively affect any efforts aimed at the recovery of wild populations of the species, and therefore we are not proposing to prohibit those activities.

Effects of This Rule

The Banggai cardinalfish is a foreign species and occurs only in areas beyond the U.S. exclusive economic zone and territorial waters. The ESA primarily protects foreign species by restricting trade; under the ESA, certain activities, including import, export, take, commercial activity, interstate commerce, and foreign commerce may be prohibited. This rule proposes to prohibit the import and export of Banggai cardinalfish into and from the United States and its territories. Research and enhancement activities that require import or export authorization will be examined on a case-by-case basis as prescribed by ESA section 10. The effects of such authorizations would be limited, because the general import into and export from the United States and its territories would be prohibited, thereby eliminating international trade of the species into and from the United States and its territories.

Public Comments Solicited

We invite comments and suggestions from all interested parties regarding this proposed rule to issue protective regulations under ESA section 4(d) for the threatened Banggai cardinalfish (see **ADDRESSES**). Data, information, and comments that are

accompanied by supporting documentation such as maps, logbooks, bibliographic references, personal notes, and/or reprints of pertinent publications are helpful and appreciated.

Public Hearing

NMFS will consider holding a public hearing on this proposal, if requested. Requests must be filed by the date specified in the **DATES** section above.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (Peer Review Bulletin), establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The Peer Review Bulletin, implemented under the Information Quality Act (Pub. L. 106-554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities. The text of the Peer Review Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Peer Review Bulletin requires Federal agencies to subject “influential” scientific information to peer review prior to public dissemination. Influential scientific information is defined as “information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions,” and the Peer Review Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. The Peer Review Bulletin establishes stricter standards for the peer review of “highly influential” scientific assessments, defined as information whose “dissemination could have a potential impact of more than \$500 million in any 1 year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.” We do not consider the scientific information underlying this proposed rule to issue ESA section 4(d) protective regulations to constitute influential scientific

information as defined in the Peer Review Bulletin. Therefore, the agency expects the information to be non-controversial and have minimal impacts on important public policies or private sector decisions.

References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

Executive Order (E.O.) 12866 - Regulatory Planning and Review

This proposed rule has been determined to be not significant for purposes of E.O. 12866 review. An IRFA has been prepared that considers the economic costs and benefits of this proposed rule to issue ESA section 4(d) protective regulations and alternatives to this rulemaking as required under E.O. 12866. To review this report, see the **ADDRESSES** section above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) was designed to ensure that the government considers the potential for its regulations to unduly inhibit the ability of small entities to compete. The goals of the RFA include increasing the government's awareness of the impact of regulations on small entities and encouraging agencies to exercise flexibility to provide regulatory relief to small entities. When a proposed rule is published for public comment in the **Federal Register**, the RFA requires the agency to prepare and make available for public comment an analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). For this proposed rulemaking, this analysis takes the form of an IRFA, which we prepared in accordance with section 603 of the RFA. We welcome comment on this IRFA, which is summarized below and is available as a supplementary document to this proposed rule.

The proposed rule would prohibit the import and export of Banggai cardinalfish and would, therefore, directly regulate entities that import and sell the fish, as well as any entities that export the fish. The large majority of direct impacts of the proposed rule would be borne by businesses that import and sell the Banggai cardinalfish wholesale. Entities that import and sell Banggai cardinalfish wholesale are classified under the Other Miscellaneous Nondurable Goods Merchant Wholesalers industry of the North American Industry Classification System (NAICS). Direct impacts to these entities would comprise the loss of revenues from the sale of Banggai cardinalfish that would be generated absent the proposed rule.

According to data gathered for the IRFA, five or fewer businesses account for all imports of Banggai cardinalfish. These businesses import approximately 120,000 Banggai cardinalfish per year, and there is no anticipated increase or decrease in the level of imports over the foreseeable future. With an estimated wholesale price of \$11 per Banggai cardinalfish, this proposed rule would result in annualized impacts to all wholesalers of approximately \$1.32 million (in 2022 dollars) in lost revenues, relative to the baseline. According to data provided by industry trade group representatives, between 80 and 90 percent of these impacts are anticipated to be borne by a single entity, whose primary NAICS industry is Other Miscellaneous Nondurable Goods Merchant Wholesalers industry (NAICS Code 424990). For NAICS Code 424990, the Small Business Administration's (SBA's) Table of Small Business Size Standards designates a small business as one which employs 100 or fewer employees. Based on employment estimates for this entity gathered from the Dun and Bradstreet Hoovers database, this entity qualifies as a small business under SBA's small business size standards. The IRFA estimates that revenue generated from sale of the Banggai cardinalfish accounts for just under 6 percent of this company's average annual revenues. It is unknown how many additional importers would be impacted through the loss of the remaining 10-20 percent

of annual U.S. wholesale sales of the Banggai cardinalfish and whether any of these businesses are small entities.

While not directly regulated by the proposed action, pet stores and other aquarium industry retailers of the Banggai cardinalfish would also be affected through the loss of revenues generated under the baseline. Entities that sell the fish retail are classified under the Pet and Pet Supplies Retailers NAICS industry. Based on an estimated retail price of approximately \$33 per fish and total annual retail sales of approximately 120,000 fish, the IRFA estimates annualized impacts to these retailers of just under \$4 million (in 2022 dollars). According to data provided by industry trade group representatives, between 80 and 90 percent of these impacts are anticipated to be borne by a single large business in the NAICS Pet and Pet Supplies Retailers industry (NAICS Code 459910). This business has annual sales greater than \$1 billion, which is well above the SBA's small business size standard of \$32 million in annual sales for companies in this industry. Impacts to this business are estimated to account for less than 0.1 percent of its average annual revenues. It is unknown how many additional retailers would be impacted through the loss of the remaining 10-20 percent of annual U.S. retail sales of the Banggai cardinalfish and whether any of these businesses are small entities.

According to interviews with industry trade group representatives, wholesale and retail sales of the Banggai cardinalfish account for nearly all U.S. trade of the fish. In comparison, import by aquaria and export for commercial or other purposes account for a small fraction of the trade of the species. Data were not available to quantify impacts to entities conducting these activities. The proposed rule would impact entities conducting scientific research on Banggai cardinalfish or other activities that enhance the propagation or survival of the species to the extent that obtaining required ESA section 10 permits would incrementally incur costs to the regulated entities and NMFS, relative to the baseline. However, ESA section 10 permits would only be required for entities

conducting research on imported Banggai cardinalfish, and the extent to which current research relies on obtaining imported Banggai cardinalfish, and the resulting extent of potential impacts to the entities conducting such research, is uncertain and cannot be quantified due to the lack of available data.

Under the proposed rule, it is possible that directly regulated importers and indirectly impacted retailers could benefit from increased demand for imported aquarium fish species that represent substitutes for the Banggai cardinalfish. Retailers could also benefit from increased demand for domestically bred Banggai cardinalfish. However, these potential benefits would be indirect and are too uncertain to quantify.

The proposed rule would not duplicate or conflict with any other laws or regulations. Currently, there are no Federal restrictions on importing the Banggai cardinalfish into or exporting the fish from the United States, and Banggai cardinalfish are not listed in any appendices of the CITES.

The RFA requires consideration of any significant alternatives to the proposed rule that would accomplish the stated objectives of the applicable statutes and would minimize significant economic impacts to small entities. We considered the following alternatives when developing this proposed rule.

Alternative 1. No Action Alternative. Under the No Action Alternative, NMFS would not establish ESA section 4(d) protective regulations (*i.e.*, no change from current management policies). The No Action Alternative represents the regulatory status quo. Without the ESA section 4(d) protective regulations established in this proposed rule, Banggai cardinalfish would remain vulnerable to a range of threats. No incremental impacts would be borne by small (or other) entities, but the Banggai cardinalfish would continue to be at risk of further declines in abundance and increased risk of extinction. Declining abundance of the species in the wild could lead to reduced imports of Banggai cardinalfish into the U.S. and/or higher costs per fish to importers as supply dwindles,

which could ultimately negatively affect revenues of small entities that sell the fish wholesale or retail. Moreover, the No Action Alternative would not accomplish the stated objectives of the ESA, because it would not aid in the conservation of the threatened Banggai cardinalfish. Thus, the No Action Alternative is not necessarily a “no cost” alternative for small entities.

Alternative 2. Application of All ESA section 9(a)(1) Prohibitions. Prohibitions under this alternative would include, but not be limited to, the import, export, possession, and sale of Banggai cardinalfish, and the delivery, receiving, carrying, transporting, or shipping of Banggai cardinalfish in interstate or foreign commerce in the course of a commercial activity. Incremental impacts to small entities under Alternative 2 could be substantially greater than those that would occur under Alternative 3, the Proposed Action, in part because of the interstate commerce prohibition, which would significantly constrain the development of wholesale and retail markets for domestically bred Banggai cardinalfish. The IRFA does not seek to quantify impacts under Alternative 2 incremental to those under Alternative 3, the Proposed Alternative for this action (see below), due to significant uncertainty regarding the extent to which a domestic market would develop for domestically bred Banggai cardinalfish under each alternative. Under Alternative 2, entities could apply for ESA section 10 permits for activities that involve the take of the Banggai cardinalfish for scientific purposes or to enhance the propagation or survival of the species. Unlike under Alternative 3, however, an ESA section 10 permit would be required for such activities not only if the Banggai cardinalfish are obtained through foreign commerce, but also if the Banggai cardinalfish are obtained domestically.

Alternative 3. Application of ESA section 9(a)(1)(A) Prohibitions (Proposed Alternative for this Action). Section 9(a)(1)(A) of the ESA would be applied to Banggai cardinalfish, thus prohibiting the species’ import into or export from the United States. This alternative would allow for delivery, receipt, carry, transport, or shipment, and sale

or offer for sale of Banggai cardinalfish in interstate commerce. As with Alternative 2, under Alternative 3, import and export of Banggai cardinalfish into and from the United States would be limited solely to research or other activities that enhance the survival of the species pursuant to the requirements of section 10 of the ESA. Unlike under Alternative 2, under Alternative 3, an ESA section 10 permit would not be required for such activities if the Banggai cardinalfish are obtained domestically. Alternative 3 was selected as the Proposed Alternative for this Action because it would promote the survival and recovery of the Banggai cardinalfish, and because this alternative would reduce the economic impacts on entities as compared to the economic impacts of Alternative 2.

E.O. 12988 - Civil Justice Reform

We have determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988. We are proposing protective regulations pursuant to the provisions of ESA section 4(d) and other ESA provisions.

E.O. 13175 - Consultation and Coordination with Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and Tribal Governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate Tribal Governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. E.O. 13175, Consultation and Coordination with Indian

Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests.

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian Tribal Governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the Tribal Governments. In developing this proposed rule, we found that it would not impose substantial direct compliance costs on the communities of Indian Tribal Governments and thus does not have tribal implications.

E.O. 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on State and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain any new or revised collection of information requirements. This rule, if adopted, would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act (NEPA)

In the case of a species listed as threatened, section 4(d) of the ESA directs that the Secretary of Commerce shall issue such regulations as the Secretary deems necessary and advisable to provide for the conservation of the species. The Secretary may, by regulation, prohibit with respect to any threatened species of fish or wildlife any or all acts prohibited under section 9(a)(1). Accordingly, the promulgation of ESA section 4(d) protective regulations is subject to the requirements of NEPA, and we have prepared a

draft EA analyzing the proposed 4(d) regulations and alternatives. We are seeking comment on the draft EA, which is available on the Federal eRulemaking Portal website (<https://www.regulations.gov>) or upon request (see **DATES** and **ADDRESSES**, above).

E.O. 13211 - Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to E.O. 13211, “significant energy action” means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. NMFS has determined that the energy effects are unlikely to exceed the energy impact thresholds identified in E.O. 13211 because this proposed rule is not significant under E.O. 12866. Therefore, no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: August 9, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 223 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In subpart B, add § 223.215 to read as follows:

§ 223.215 Banggai cardinalfish.

(a) *Prohibitions.* The prohibitions of section 9(a)(1)(A) of the ESA (16 U.S.C. 1538(a)(1)(A)) relating to endangered species apply to the threatened Banggai cardinalfish listed in § 223.102(e).

(b) [Reserved]

[FR Doc. 2023-17492 Filed: 8/14/2023 8:45 am; Publication Date: 8/15/2023]